

**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.	Application 12-04-019 (Filed April 23, 2012)
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**ADMINISTRATIVE LAW JUDGE'S RULING REJECTING COALITION OF  
PENINSULA BUSINESSES' AMENDED NOTICE OF INTENT TO CLAIM  
INTERVENOR COMPENSATION**

<b>Party intending to claim intervenor compensation):</b> Coalition of Peninsula Businesses, an unincorporated association of Monterey County Hospitality Association, Monterey Commercial Property Owners Association, Monterey County Association of Realtors, Chambers of Commerce of Carmel, Monterey Peninsula and Pacific Grove, Community Hospital of the Monterey Peninsula, and the Santa Clara-Monterey District of Associated General Contractors of California	
<b>Assigned Commissioner:</b> Catherine J.K. Sandoval	<b>Administrative Law Judge:</b> Gary Weatherford

**PART I: PROCEDURAL ISSUES**

<b>A. Status as "customer" (see Pub. Util. Code § 1802(b)):<sup>1</sup></b> The party claims "customer" status because the party is (check one):	<b>Applies (check)</b>
1. A <b>Category 1</b> customer is an actual customer whose self-interest in the proceeding arises primarily from his/her role as a customer of the utility and, at the same time, the customer must represent the broader interests of at least some other customers.  In addition to describing your own interest in the proceeding you must show how your participation goes beyond just your own self-interest and will benefit other customers.	<input type="checkbox"/>
2. A <b>Category 2</b> customer is a representative who has been authorized by actual customers to represent them. Category 2 involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customer's views in a proceeding. A customer or group of customers may also form or authorize a group to represent them, and the group, in turn, may authorize a representative such as an attorney to represent the group.	<input type="checkbox"/>

<sup>1</sup> All statutory references are to California Public Utilities Code unless indicated otherwise.

<p>A representative authorized by a customer must identify the residential customer(s) being represented and provide authorization from at least one customer.  <i>See D.98-04-059 at 30.</i></p>	
<p>3. A <b>Category 3</b> customer is a formally organized group authorized, by its articles of incorporation or bylaws to represent the interests of residential customers or small commercial customers receiving bundled electric service from an electrical corporation.<sup>2</sup> Certain environmental groups that represent residential customers with concerns for the environment may also qualify as Category 3 customers, even if the above requirement is not specifically met in the articles or bylaws.  <i>See D.98-04-059, footnote at 3.</i></p>	<b>X</b>
<p>The party's explanation of its customer status must include the percentage of the intervenors members who are residential ratepayers or the percentage of the intervenors members who are customers receiving bundled electric service from an electrical corporation, and must include supporting documentation: (i.e., articles of incorporation or bylaws).</p> <p>The Coalition of Peninsula Businesses is organized to pursue a solution to the Peninsula's long-standing water supply problem in time to avoid the deadline of the State Water Resources Control Board Cease and Desist Order against California-American Water Company (CAW) – Water Rights Order 09-060 – as the most reasonable cost to CAW customers. Please see the Coalition of Peninsula Businesses Articles of Incorporation and Bylaws attached and its Statement of Purpose attached. The vast majority of the constituent members of the associated organizations are CAW commercial and residential customers (ie, MCHA members 70%, MCPOA members 100%, Chambers of Commerce 75% to 100%, CHOMP 85%, MCAR 65%). The Coalition of Peninsula Businesses is the only party to the proceeding that will actively pursue Issue #1 in Part II § A, below.</p>	
<p>Do you have any direct economic interest in outcomes of the proceeding?<sup>3</sup></p> <p>Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/></p> <p>The Coalition of Peninsula Businesses nor its associated organizations have a direct financial interest in the outcome of the proceeding.</p> <p>If "Yes", explain:</p>	
<b>B. Conflict of Interest (§ 1802.3)</b>	<b>Check</b>
<p>1. Is the customer a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical</p>	<input type="checkbox"/> Yes

<sup>2</sup> Intervenors representing either a group of residential customers or small commercial customers who receive bundled electric service from an electrical corporation, must indicate in Part I, Section A, Item #4 of this form, the percentage of their members who are residential customers or the percentage of their members who receive bundled electric service from an electrical corporation. The NOI may be rejected if this information is omitted.

<sup>3</sup> See Rule 17.1(e).

corporation?	<input type="checkbox"/> No
2. If the answer to the above question is “Yes”, does the customer have a conflict arising from prior representation before the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>C. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):</b>	<b>Check</b>
1. Is the party’s NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: June 6, 2012	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the party’s NOI filed at another time (for example, because no Prehearing Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## PART II: SCOPE OF ANTICIPATED PARTICIPATION

<b>A. Planned Participation (§ 1804(a)(2)(A)(i)):</b>
<p>The party’s statement of the issues on which it plans to participate:</p> <ol style="list-style-type: none"> <li>Address adequacy and timing of Monterey Peninsula Water Supply Project (MPWSP) and its related projects (Groundwater Recharge [GWR] and Aquifer Storage and Recovery [ASR]) to timely (that is, prior to the CDO deadline of December 31, 2016) produce sufficient, stable, secure and sustainable water supplies to meet the reasonable needs of CAW customers (which includes service to lots of record, general plan needs of the six Peninsula cities and unincorporated [county] areas, and economic recovery of the hospitality and other industries) Included in this analysis will be marginal cost estimates for various sizes of projects.</li> <li>Establish, to the satisfaction of Monterey agricultural interests, water rights to desalinated water produced (including compliance with the County’s ban on exporting Salinas Basin groundwater) and establish, to the satisfaction of Monterey County agricultural interests, the rights, and the extent of those rights, to recycled water produced by Monterey Regional Water Pollution Control Agency for use by CAW to serve its customers.</li> <li>Establish a governance scheme or vehicle for MPSWP that satisfies the reasonable and realistic needs of the Monterey Peninsula Regional Water Authority (or, secondarily the Monterey Peninsula Water Management District).</li> </ol> <p>The party’s explanation of how it plans to avoid duplication of effort with other parties:</p> <p>The Coalition of Peninsula Businesses will reach out to, and cooperate with, proceedings participants to include, where feasible, sharing of legal representation, sharing of expert and other witness costs, and other expenses of participation. The outreach process has begun with the Monterey County Farm Bureau and the Salinas Valley Water Coalition.</p> <p>The party’s description of the nature and extent of the party’s planned participation in this proceeding (to the extent that it is possible to describe on the date this NOI is filed).</p> <p>The Coalition of Peninsula Businesses intends to participate in party discussions and negotiations,</p>

substantive workshops and hearings, produce and submit data and expert and other testimony, and submit briefs and comments when appropriate. The Coalition also intends to continue its public outreach about its efforts to timely obtain a safe, secure, sufficient and sustainable Peninsula water supply.

**B. The party's itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)(ii)):**

Item	Hours	Rate \$	Total \$	#
<b>ATTORNEY, EXPERT, AND ADVOCATE FEES</b>				
[Attorney 1]	300	\$400	\$120,000	
[Attorney 2]	100	\$300	\$30,000	
[Expert 1] Water demand and project sizing expert (water or environmental engineer)	100	\$300	\$30,000	1
[Expert 2] Water demand and project sizing expert (water or environmental engineer or hydrologist)	100	\$300	\$30,000	1
[Expert 3] Consultant or expert on water rights issues	50	\$300	\$15,000	2
[Expert 4] Consultant or attorney on governance issues	50	\$300	\$15,000	3
[Advocate 1] Bob McKenzie, water issues consultant	100	\$200	\$20,000	2, 3
[Advocate 2] Dale Ellis, water issues and planning consultant	75	\$200	\$15,000	2, 3
<b>Subtotal: \$ 275,000</b>				
<b>COSTS</b>				
[Item 1] Copying and mailing			\$2,500	
[Item 2] Travel			\$7,500	
[Item 3] Contingencies			\$5,000	
<b>Subtotal: \$ 15,000</b>				
<b>TOTAL ESTIMATE: \$290,000</b>				
Estimated Budget by Issues:				
Issue 1 – 75%				
Issue 2 – 15%				
Issue 3 – 10%				
Comments/Elaboration (use reference # from above):				
The Coalition is in the process of securing the services of attorneys, engineering and/or hydrologist services, water demand experts, and water rights attorneys or experts. Bob McKenzie is a Certified Public Accountant and public policy expert with four decades of experience and 17 years of experience with water issues. Dale Ellis is a member of the American Planning Association and the American Institute of Certified Planners (retired Monterey County Planning Assistant Director)				

with decades of planning and public policy experience.

### PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP

<b>A. The party claims “significant financial hardship” for its Intervenor Compensation Claim in this proceeding on the following basis:</b>	<b>Applies (check)</b>
1. “[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation” (§ 1802(g)); or	<input type="checkbox"/>
2. “[I]n the case of a group or organization, the economic interest of the Individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding” (§ 1802(g)).	<input checked="" type="checkbox"/>
3. A § 1802(g) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption in this proceeding ( § 1804(b)(1)).  Commission’s finding of significant financial hardship made in proceeding number:  Date of Administrative Law Judge’s Ruling (or CPUC Decision) in which the finding of significant financial hardship was made:	<input type="checkbox"/>
<b>B. The party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(g)) (necessary documentation, if warranted, is attached to the NOI:</b>	
The costs of the Coalition’s participation outweigh any benefits to associated organizations or their constituent members. The typical water bill for constituent members of the Coalition is less than \$100 per month. Even if the typical water bill increased by 300%, the costs to constituent members would be far exceeded by the almost \$300,000 estimated costs for effective participation. Without intervenor compensation, the Coalition would be unable to meaningfully or effectively participate or properly or forcefully bring its arguments to bear in this proceeding.	

### ADMINISTRATIVE LAW JUDGE RULING

<b>1. The NOI has not demonstrated the party’s status as a “customer” for the following reasons:</b>	<input type="checkbox"/>
<p><b>a) <u>Coalition of Peninsula Businesses is not authorized to represent utility customers.</u></b></p> <p>Coalition of Peninsula Businesses (CPB) claims it is a category 3 customer, i.e., an organization “authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive</p>	

bundled electric service from an electrical corporation” (§ 1802(b)(1)(C)). CPB’s Articles state that the earnings and assets of CPB are dedicated to educational purposes.<sup>4</sup> Articles state that its purpose is

[E]stablishing a fund from various private and public resources to educate with respect to local issues affecting the welfare of the residents and their community; to support the passage of local legislation aimed at improving the economy of Monterey County and the Monterey Peninsula; to represent residents and commercial interests in proceedings before the California Public Utilities Commission...<sup>5</sup>

These provisions authorize CPB to establish a fund, and to fund various activities, including a representation of utility customers. This authority is not an equivalent to the authority to represent required under § 1802(b)(1)(C) nor such authority could be reasonably inferred from the stated purposes of this organization.

**b) Coalition of Peninsula Businesses does not represent residential ratepayers**

The NOI states that the vast majority of Coalition of Peninsula Businesses’ (CPB) constituent members are California-American Water Company’s commercial and residential customers. However, according to the NOI and CPB’s bylaws, CPB is composed of the

- Monterey County Hospitality Association,
- Monterey Commercial Property Owners Association,
- Monterey County Association of Realtors,
- Carmel Chamber of Commerce,
- Monterey Peninsula Chamber of Commerce,
- Pacific Grove Chamber of Commerce,
- Community Hospital of the Monterey Peninsula,
- Associated General Contractors of California, Santa Clara, and
- Associated General Contractors, Monterey Bay District.<sup>6</sup>

None of these members are residential utility ratepayers or represent such ratepayers. The interests of an association, chamber, community hospital, or associated general contractors are not those of residential ratepayers, and the NOI fails to explain how they can reasonably

<sup>4</sup> CPB’s Articles of Incorporation, Article V.

<sup>5</sup> CPB’s Articles of Incorporation, Article II(B); see also similar provisions in CPB’s bylaws, Article III.

<sup>6</sup> CPB’s Bylaws Article VII.

represent those interests. CPB's bylaws specifically exclude individuals (i.e. residential utility customers) from its membership.<sup>7</sup>

The CPB may represent the interests of small commercial customers who receive bundled electric service from an electrical corporation, but the NOI fails to demonstrate that CPB members represent such customers and not those of bundled commercial customers who are other than small.

**c) Section §1802.3 conflict of interest precludes CPB's eligibility**

There are multiple conflicts of interests ingrained in participating on behalf of commercial and industrial entities. Both CPB's membership and agenda in this proceeding<sup>8</sup> reflect a large spectrum of the conflicting interests of large, medium and small commercial and industrial customers. CPB's past participation in the Commission proceedings (for example, in A.10-07-007/A.11-09-016 or A.13-07-002) encompassed commercial and industrial interests of the local businesses, irrespective of the sizes. Section 1802.3 bans eligibility of organizations representing the interests of small commercial customers when a conflict arising from prior representation before the Commission takes place. Here, participation on behalf of the interests of small commercial ratepayers effectively conflicts not only with CPB's prior participation on behalf of medium and large commercial and industrial customers but also with CPB's participation in this proceeding where the interests of small, medium and large commercial and industrial customers significantly diverge. Participation on behalf of the conflicting interests is not compensable.<sup>9</sup> We are not allowed to waive § 1802.3 conflict.

**2. The NOI has not demonstrated significant financial hardship for the following reasons:**

“The intervenor compensation program is intended to encourage the participation of all customers in Commission proceedings by helping them overcome the cost barriers to

<sup>7</sup> CPB's Bylaws, Article VII.

<sup>8</sup> The NOI Part II(A).

<sup>9</sup> The statute makes only one specific exception to this rule when it allows, in § 1812, eligibility to an organization representing the interests of small and large agricultural customers.

effective and efficient participation. ... [T]he intent of the statute that only those particular interests that would otherwise be underrepresented should be compensated.”<sup>10</sup> To demonstrate their eligibility for compensation, § 1802(b)(1)(C) customers must demonstrate that the economic interest of the individual members of the organization is small in comparison to the costs of effective participation (§ 1802(g)).

CPB consists of the organizations representing local commercial and industrial interests. In particular, California American Water Company is a “President’s Club” member of Monterey Commercial Property Owners Association, a member of CPB.<sup>11</sup> The typical water bill for organizations-members of the Coalition may well be \$100 per month,<sup>12</sup> but their constituents, industrial and commercial entities, have significant interests at stake in the outcomes of this proceeding, and these organizations advocate for the economic interests of these constituents. These entities do not have financial barriers to participate in this litigation and they are not underrepresented. The NOI does not demonstrate significant financial hardship because these entities’ economic interests in the outcomes of this proceeding outweigh reasonable costs of CPB’s participation.

Moreover, as a fund funded from various private and public resources, CPB directly or through its members may receive contributions from the medium and large commercial and industrial entities (including the Applicant in this proceeding), that have direct economic interest in this proceeding. CPB’s bylaws and articles do not preclude it from receiving such contributions.

For the above reasons, the ruling rejects the NOI.

CPB is not precluded from participating at its own costs in this proceeding. This is a preliminary ruling (see PU Code Section 1804(b)(1)). If it elects to do so, CPB may submit a claim at the end of the proceeding with its complete showing on eligibility, significant financial hardship, and all other required elements, for a determination by the Commission.

<sup>10</sup> See D.98-04-059 at 26 and § 1802(b)(C).

<sup>11</sup> Monterey Commercial Property Owners Association’s website at <http://www.mcpoa.org>.

<sup>12</sup> NOI, Part III(B).



**IT IS RULED** that:

1. The Notice of Intent filed by the Coalition of Peninsula Businesses is rejected.	<input checked="checked" type="checkbox"/>
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Dated August 30, 2016, at San Francisco, California.

/s/ GARY WEATHERFORD

Gary Weatherford  
Administrative Law Judge